

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

*In re* Navidea Biopharmaceuticals Litigation

Case No.: 1:19-cv-01578-VEC-VF

**NAVIDEA BIOPHARMACEUTICALS, INC.'S AND MACROPHAGE  
THERAPEUTICS, INC.'S RESPONSE TO DR. MICHAEL M. GOLDBERG'S  
ADDITIONAL STATEMENTS OF NON-MATERIAL FACT NOT IN DISPUTE**

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Inc. and Third-Party Defendant  
Macrophage Therapeutics, Inc.*

Plaintiff/Counterclaim Defendant Navidea Biopharmaceuticals, Inc. (“Navidea”) and Third-Party Defendant Macrophage Therapeutics, Inc. (“Macrophage”), by and through their counsel, respectfully submit their Response to the “Additional Statements of Non-Material Fact Not in Dispute” submitted by Defendant/Counterclaim Plaintiff and Third-Party Plaintiff Dr. Michael M. Goldberg M.D. (“Dr. Goldberg”) in connection with Navidea’s and Macrophage’s Motion for Summary Judgment.

**ADDITIONAL STATEMENTS OF NON-MATERIAL FACT NOT IN DISPUTE**

1. Navidea issued certain shares of Navidea common stock to Dr. Goldberg in November 2018, when no Transaction Documents had been signed. (Zimmer Decl. Ex. 18.)

**RESPONSE TO SMF NO. 1:** Admitted.

2. Navidea purported to place some shares in escrow, even though the draft Escrow Agreement, one of the draft Transaction Documents provided by Navidea’s counsel, was never executed. (*Id.* Ex. 20.)

**RESPONSE TO SMF NO. 2:** Admitted.

3. On November 29, 2018, Dr. Goldberg became a minority member of Macrophage’s board, because Navidea appointed two (majority) members of the board, who were also Navidea directors (and the Special Committee members who negotiated and approved the August Agreement). (Zimmer Decl. Ex. 2 at 225:24-226:19, 302:15-305:1; Ex. 8 at 348:18-24; Ex. 10 at 328:16-335:3; Ex. 6 at 63:8-17, 385:17-386:20, 641:18-642:12.)

**RESPONSE TO SMF NO. 3:** Disputed. Pursuant to the Securities Purchase Agreement, Dr. Goldberg was always one of three board members of Macrophage. (*See* Kazan Decl. Ex. 5 at Section 5.6(a).) Admitted that the two board members appointed to the Macrophage board on

November 29, 2018 were the Special Committee members who negotiated and approved the August Agreement.

Dated: New York, New York  
July 20, 2023

Respectfully submitted,

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